

1919.

NAGINDAS  
BHUKHANDAS  
v.  
GHELABHAI  
GULABDAS.

For these reasons I would set aside the order of imprisonment. The respondent to bear the costs throughout. The bail bond to be discharged.

SHAH, J. :—I concur.

*Order set aside.*

R. R.

## APPELLATE CIVIL.

*Before Mr. Justice Shah, and Mr. Justice Crump.*

1919.

December 3.

MINNA WINSOR (ORIGINAL OPPONENT), APPELLANT v. E. WINSOR (ORIGINAL APPLICANT), RESPONDENT.\*

*Indian Succession Act (X of 1865), sections 264 B, 239—Administrator—Directions—District Court cannot, but High Court can, give directions.*

A District Court has no power to give directions to an administrator in regard to the estate, when Letters of Administration have already been granted. The power vests in the High Court by virtue of section 264 B of the Indian Succession Act (X of 1865).

APPEAL from orders passed by P. E. Percival, District Judge of Poona.

The facts were that one Miss E. Winsor took out Letters of Administration to the estate of her deceased father. She next applied to the Court on the 1st October 1918 for an order to sell all the houses belonging to the deceased by public auction. The Court passed the order with the consent of other daughters of the deceased. Then on the 14th of the same month, a further application was made for modifying the above order, and the Court after hearing all parties, ordered on the 3rd December 1918, that the family house should be valued by the Nazir of the Court and Minnie Winsor (one of the daughters) be paid her one-eighth share in the valuation, and that the remaining houses should be sold by private arrangement and not by auction.

\* First Appeal No. 57 of 1919.

Minnie Winsor appealed to the High Court.

*S. Y. Abhyankar*, for the appellant:—I submit that the order of the learned District Judge is wrong. Letters of Administration with the will annexed were granted to the respondent *ex parte*. My client was not then in Bombay and on her return she appeared through a pleader and applied for revocation of the Letters of Administration granted *ex parte*.

1919.

---

 WINSOR  
v.  
WINSOR.

[SHAH, J.:—Is there anything on the record to show that you applied for revocation?]

There is nothing on the record but the judgment shows that the pleader for my client appeared and certain terms were settled by agreement and the Judge passed an order confirming the Letters of Administration granted previously subject to the terms settled by agreement. This statement in the judgment shows that there was a motion for revocation in the course of which the order was passed.

My submission is that the learned Judge, therefore, could not change the order passed on consent without the consent of the party and ought to be set aside.

Supposing it is held by this Hon'ble Court that the learned Judge had no authority to pass the order by consent then both the orders should be vacated and the parties may be left in the same position as they were when the Letters of Administration were first granted. The respondent should then do whatever she wants on her own responsibility.

*H. V. Divatia*, for the respondent:—Under section 269 of the Indian Succession Act, an administrator has power to dispose of the property of the deceased in such manner as he may think fit: *A. L. Seale v. Brown*<sup>(1)</sup>. It was not, therefore, obligatory on our part to apply for

1919.

---

 WINSOR  
 v.  
 WINSOR.

the sanction of the Court to sell the property. But even if it were so, the order of the lower Court is perfectly correct as seven out of eight co-sharers of the property want it to be valued by an officer of the Court, advertised and sold at a private sale. As regards the family house, they do not want it to be sold but to pay off the appellant the money-value of her share therein.

If the Court is of opinion that the lower Court had no jurisdiction to give directions for sale after the Letters of Administration were granted to the respondent, both the orders passed by the lower Court after the grant of the Letters, may be vacated and the respondent may be left free to dispose of the property as she likes.

SHAH, J. :—In this case on the application of Miss E. Winsor for Letters of Administration of the estate of her deceased father, the District Judge granted the Letters of Administration to her on the 6th of September 1918. There were other sisters of the applicant who either did not appear or did not oppose the application. It is not clear from the record as to what exactly happened on the 1st of October 1918 ; but an order was made, apparently with the consent of the sister, who is the appellant before us, and of the pleader who appeared for the original applicant, directing that all the houses in question should be advertised and auctioned, the exact arrangement being settled between the parties. On the 14th of October a further application was put in on behalf of the original applicant asking for certain modification of the order of the 1st of October. After hearing the parties the learned District Judge made an order on the 3rd of December 1918, directing that the family house should be valued by the Nazir of the District Court ; that the opponent (the present appellant) be paid her one-eighth share in accordance with his valuation, and that the other houses should be sold by private arrangement and not by auction.

The opponent in the Court below has appealed to this Court ; and the principal question that arises in the appeal, apart from the merits of these two orders, is whether the District Court had any jurisdiction to make the orders which it made after granting the Letters of Administration on the 6th of September. The Letters of Administration have been granted under the Indian Succession Act, and the case is governed by the provisions of that Act. We have not been referred to any provision of the Indian Succession Act under which these orders after the Letters of Administration are granted and after an administrator is duly constituted could be justified. Apparently the District Judge had no power to give such directions as he has given in this case on the first occasion with the consent of the parties and on the second occasion after hearing the parties according to his own view of the matter. It appears from the provisions of Act V of 1902, section 5, sub-section 2, that the High Court may give directions to any private executor or administrator other than the Administrator-General acting officially. This provision has been recently repealed and transferred to the Indian Succession Act as section 264 B by Act XVIII of 1919. I refer to this provision only for the purpose of showing that the power of giving directions to an executor or an administrator is conferred upon the High Court. There is no corresponding power given to the District Court. It appears from the provisions of section 239 of the Indian Succession Act that the District Court has power to make orders with reference to the property under certain circumstances so long as no person has been appointed administrator of the estate or granted probate of a will. But it is obvious that that section has no application after an administrator is constituted. We are unable to refer the orders made by the District Judge after the grant of the Letters

1919.

---

WINSOR  
v.  
WINSOR.

1919.

WINSOR  
v.  
WINSOR.

of Administration to any provision of the Indian Succession Act. The result is that both these orders, one made on the 1st of October and the other made on the 3rd of December, must be discharged and the parties must be left in the position in which they were when the Letters of Administration were granted to the present respondent on the 6th of September 1918.

This will be without prejudice to any remedy which the persons interested in the estate may have for securing relief by way of such directions to the administratrix as they may desire under the circumstances.

The costs of this appeal and costs in the lower Court subsequent to the order of the 6th of September to come out of the estate.

*Order accordingly*

R. R.

### CRIMINAL REVISION.

*Before Mr. Justice Shah, and Mr. Justice Crump.*

EMPEROR v. SADASHIV BAB HABBU AND OTHERS.\*

1919.

December 5

*Bombay Prevention of Gambling Act (Bombay Act IV of 1887), section 8†—  
Order of forfeiture—Cash and ornaments found on the person of the gamblers.*

\* Criminal Application for Revision No. 354 of 1919.

† The section runs as follows :—

8. On conviction of any person for opening, keeping or using a common gaming-house, or playing or gaming therein, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein, or on the persons of those who were found therein, to be forthwith destroyed,

and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and the proceeds thereof with all moneys seized therein, to be forfeited or, in his discretion, may order any part of such proceeds and other moneys to be paid to any person appearing to be entitled thereto.